

**PART 5328—BONDS AND INSURANCE****TABLE OF CONTENTS**

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## **PART 5328—BONDS AND INSURANCE**

### **SUBPART 5328.1—BONDS**

#### **5328.101-90 Bid guarantees for supply contracts.**

All annual bid guarantees shall be submitted in duplicate to AFMC LO/JAN, 1864 Fourth Street, Bldg 15, Room 130A, Wright-Patterson AFB, OH 45433-7135, (513) 255-6113 or DSN 785-6113, for review, approval, and subsequent filing of the original with the contract. When a contractor indicates in its bid that it has an annual bid bond on file, verification may be obtained from AFMC LO/JAN.

#### **5328.103 Performance and payment bonds for other than construction contracts.**

##### **5328.103-1 General.**

Performance and payment bonds shall not be required in other than construction contracts unless there is a documented history of prior default by contractors in the particular type of work to be accomplished. Additionally, documentation of the inherent or recurring nature of such defaults, and the reasons therefore must be prepared before a determination to use such bonds can be made. In such cases, the determination to use bonds shall identify the protection sought from the bond which is not already provided by the Government Property, Protection of Government Buildings, Equipment and Vegetation, and the Service Contract Act clauses, or contractor's liability insurance. Additionally, such determination shall quantify the value of the protection afforded by the bonds and weigh this against the cost of bonding. The determination to use performance and payment bonds shall be made based upon careful consideration of the merits of each situation. The determination to require bonds in base level nonconstruction services contracts shall be approved by the chief or deputy chief of the base contracting office. Areas of consideration in establishing bonding requirements are as follows:

- (1) Rates sureties/insurance companies charge for bonds are based on the full (not a percentage of the) contract price. Thus, when requiring bonds, the amount shall not be specified as a percentage of the contract price;
- (2) Rates charged for a specific penal sum are considerably higher than rates charged based on contract price. Thus, unless the additional cost can be justified, a particular penal sum shall not be specified;
- (3) Payment bonds are normally incorporated in performance bonds. Thus, separate payment bonds need not be requested;
- (4) Added bonding coverage does not automatically occur when options to extend the period of performance are exercised. Thus, if bonds remain appropriate, the contracting officer shall verify the existence of the bond; and
- (5) Insurance companies executing bonds using a limited power of attorney shall submit evidence with the bond to show that the attorney, in fact, has complied with the limitation. These powers of attorney generally apply to bonds with a Small Business Administration (SBA) guarantee indemnification. The SBA Form 990, Guarantee Agreement, is acceptable evidence. Marking block 41b of AF Form 3012, Contract Bonds Checklist, will indicate that the proper forms have been received and reviewed.

#### **5328.104 Annual performance bonds.**

All annual performance bonds for contracts other than construction contracts shall be submitted in duplicate to AFMC LO/JAN for review, approval, and subsequent filing of the original with the original contract. Use Standard Form 35, Annual Performance Bond. Such bonds are not authorized without prior approval of AFMC LO/JAN.

#### **5328.106 Administration.**

##### **5328.106-6 Furnishing information.**

(c) The contracting officer is designated to provide certified copies of payment bonds and contracts to the individuals described in FAR 28.106-6 (c).

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**5328.106-90 Review of bonds and notification of surety.**

All performance and payment bonds (except annual bonds, see 5328.104 and 5328.101-90) and all consents of surety shall be reviewed by the contracting officer using AF Form 3012, Contract Bonds Checklist. When doubt of legal sufficiency exists, obtain the advice of the staff judge advocate serving the facility. The contracting officer shall include a copy of all applicable bonds and consents of surety in the contract file.

**SUBPART 5328.3—INSURANCE****5328.304 Risk-pooling arrangements.**

Air Force contracting officers responsible for contract administration functions on contracts for which contract administration is retained by the Air Force are designated as the point of contact for each arrangement.

**5328.305 Overseas workers' compensation and war hazard insurance.**

(d) Requests for waivers shall be submitted through the HCA to the Deputy Assistant Secretary (Contracting) (SAF/AQC).

**5328.307 Insurance under cost-reimbursement contracts.****5328.307-1 Group insurance plans.**

(a) *Prior approval requirement.* Group insurance plans under cost-reimbursement contracts for which contract administration is retained by the Air Force shall be submitted for approval to the Air Force contracting officer responsible for contract administration.

**5328.307-2 Liability.**

(b) *General liability.* The vast majority of contractors carry primary insurance on a comprehensive policy and supplement the primary limits of liability with umbrella liability coverage. Umbrella policies follow the form of the primary insurance and provide additional limits and coverage. The insurance marketplace requires varying amounts of primary liability to underlie their umbrella coverage and these amounts are frequently less than the \$500,000 required in FAR 28.307-2 (b). FAR 28.307-2 (b) does not require only comprehensive form coverage. Contracting officers should accept umbrella policies in addition to comprehensive primary insurance, as evidence of FAR-required insurance coverage. For example, a contractor having \$200,000 in general liability coverage and, in addition, \$500,000 in umbrella form liability coverage should be considered in compliance with the \$500,000 requirement in FAR 28.307-2 (b).